

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of )  
 ) D 04 - 01  
**Kenneth I. Tobey, Inc.** )  
 & ) STIPULATION AND CONSENT ORDER  
**Harold L. Anderson,** )  
 )  
 Licensees. )  
\_\_\_\_\_

**STIPULATED FACTS:**

1. At all times relevant to this matter, Kenneth I. Tobey, Inc. (KIT) was licensed as an insurance agent, broker, general agent, and adjuster in the State of Washington, and as a non-resident insurance agent in the State of Oregon.
2. At all times relevant to this matter, Harold L. Anderson (Anderson) was licensed in the State of Washington as an insurance agent and general agent.
3. At all times relevant to this matter, Anderson was the majority shareholder of KIT and was responsible for the accounting for and disbursement of KIT funds.
4. Ken Combs, Office of the Insurance Commissioner (OIC) Insurance Examiner IV, (Combs) completed a review of KIT's premium account on April 11, 2003. He discovered that Anderson had been using funds from KIT's premium account to pay for the agency's business operation in addition to paying premiums. As of May 31, 2003 KIT's premium account had a shortfall of approximately \$1,648,999. Anderson admitted that he was aware of the shortage, but did not agree that the amount of the shortage reflected the true picture of all of his business accounts. Taking into consideration the positive account balance of the other insurance agency Anderson owned, Mutual Insurance Services, the total account balance deficit, combining the two agencies accounts as of May 31, 2003, was \$512,941. Anderson at that time had already placed Mutual Insurance Services for sale to cure the shortage.
5. In recent years, KIT has experienced several significant business setbacks. In late 2001, as a consequence of '9-11', a major market for KIT lost its reinsurance and, in February 2002, KIT was forced to stop writing private passenger automobile insurance in the State of Washington for that market. This action caused KIT to drop over \$1.2 million in monthly production, while remaining saddled with the runoff of 50,000 open policies with no income. Anderson used funds from KIT's premium account to address cash flow and operations expense issues.
6. Combs monitored KIT's premium account balance each month following his April 11, 2003 review. The account balance was positive as of August, 2003 and has remained positive each month thereafter, through November 30, 2003. That positive account

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balance was primarily attributable to receipt of proceeds from the sale of Anderson's other agency, Mutual Insurance Services.

7. At no time relevant to this matter did any consumer, insurance agent, insurance broker, or insurance company go unpaid or suffer demonstrable harm.

### CONCLUSIONS OF LAW:

1. As a licensed insurance agent, Kenneth I. Tobey, Inc. is governed by the provisions of Title 48 RCW and Title 284 WAC.
2. As a licensed insurance agent, Harold L. Anderson is governed by the provisions of Title 48 RCW and Title 284 WAC.
3. Harold L. Anderson, on behalf of Kenneth I. Tobey, Inc., failed to promptly pay insurance premiums received in a fiduciary capacity, in violation of RCW 48.17.480.
4. Harold L. Anderson, on behalf of Kenneth I. Tobey, Inc., failed to account for and maintain insurance premiums or return premiums in an account separate from all other business and personal funds, in violation of RCW 48.17.600.
5. Harold L. Anderson has violated RCW 48.17.480 and RCW 48.17.600 and, as contemplated by RCW 48.17.530(1) (b), the Commissioner may revoke the insurance licenses of Harold L. Anderson and Kenneth I. Tobey, Inc., pursuant to RCW 48.17.530.

### CONSENT TO ORDER:

1. Harold L. Anderson and Kenneth I. Tobey, Inc., hereby admit to the foregoing Stipulated Facts and Conclusions of Law. Harold L. Anderson and Kenneth I. Tobey, Inc., acknowledge their duty to comply fully with the applicable insurance laws of the State of Washington.
2. The Commissioner has agreed to a settlement in lieu of suspending or revoking the insurance licenses of Harold L. Anderson and Kenneth I. Tobey, Inc.
3. By agreement of the parties, the OIC will impose a fine of \$100,000 on Harold L. Anderson for the violations set forth herein. In addition, the parties agree that OIC will suspend collection of \$75,000 of the fine if the following conditions are met during the two years following the date of this order.

### CONDITIONS:

1. Harold L. Anderson shall pay the \$25,000 fine within thirty days of the effective date of this Order.

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2. Harold L. Anderson and Kenneth I. Tobey, Inc. shall comply with the timely reporting and accounting of premiums requirements of RCW 48.17.480.
3. Harold L. Anderson and Kenneth I. Tobey, Inc. shall comply with the separation of premium funds requirements of RCW 48.17.600.
4. Harold L. Anderson and Kenneth I. Tobey, Inc. will provide OIC, for a period of two years, with monthly financial statements, acceptable to the Commissioner, demonstrating their compliance with RCW 48.17.480 and RCW 48.17.600.
5. Harold L. Anderson and Kenneth I. Tobey, Inc. acknowledge and understand OIC has the right to audit the licensees' accounting and sales records during normal business hours as often as it deems appropriate without sending prior notification to the licensees.

EXECUTED and AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

By: \_\_\_\_\_

**Harold L. Anderson, President  
Kenneth I. Tobey, Inc., Licensee  
&  
Harold L. Anderson, Licensee**

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**ORDER**

Pursuant to RCW 48.17.560 and the foregoing Consent Order, the Commissioner hereby imposes a total fine in the amount of \$100,000 upon Kenneth I. Tobey, Inc. and Harold L. Anderson, and suspends \$75,000 of the fine.

The \$25,000 fine shall be paid in full within thirty days from the date of this Order. If the licensees fail to pay the fine, the Commissioner will revoke the licenses of Harold L. Anderson and Kenneth I. Tobey, Inc., and the total fine, including the suspended amount, will be recoverable in a civil action brought on behalf of the Commissioner by the Attorney General's Office.

Failure to comply with all of the conditions set forth in the Conditions Section of the Stipulation and Consent Order shall constitute grounds for collection of the entire amount of \$100,000 and the automatic and immediate revocation of the insurance agent licenses of Kenneth I. Tobey, Inc. and Harold L. Anderson.

ENTERED AT TUNWATER, WASHINGTON, this 9<sup>th</sup> day of January, 2004.

MIKE KREIDLER  
Insurance Commissioner

By

SCOTT JARVIS  
Deputy Commissioner

Examiners: Ken Combs